IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 99 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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ISHWARBHAI MANORBHAI PATEL HEIR OF MANORBHAI G PATEL & 3 - Appellant(s)
Versus
CHANDANSINGH RAJUJI THAKORE & 2 - Defendant(s)

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Appearance :
MR AN PATEL for Appellant(s) : 1 - 4.
MR AV TRIVEDI for Defendant(s) : 1,
None for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/07/2006

ORAL JUDGMENT

1. By way of this appeal the present appellant has challenged the judgement and order dated 29.10.1980 passed by the Motor Accident Claims Tribunal (Main), Mehsana in M.A.C.P No. 240 of 1997 whereby the Tribunal directed the original opponent Nos. 1 and 2 to pay sum of Rs. 64,500/- by way of compensation to the present applicant.

2. The short facts of the case are that original

applicant has claimed compensation for causing injuries to him by original opponent No. 1 by driving the truck bearing Registration No. GTF 3051. The original applicant has boarded truck along with his agriculture produce cumin seeds, Rayada, Oil-seeds, etc. to go to marketing Yard at Unjha and on 2.4.1979 at about 7.00 p.m. the truck was proceeding to Unjha via Mehsana and when it went nearby Dediyasan village on Modhera and Mehsana road, the opponent No. 1 driving the truck in high speed, because of that the truck over-turned and all the passengers received injuries, fracture is caused and permanent disability is caused to him. It is noted that there are other appellants who were sit with the applicant have also received injuries, fractures and some of them were caused permanent disability. Therefore they filed a separate claim petitions. Here the present appellants have filed claim petition which is under challenged claiming compensation of Rs. 1,00,000/-.

3. Learned advocate for the applicants has submitted that Tribunal ought to have held the Insurance Company liable jointly and severally to

satisfy the whole claim for Rs. 64,500/- alongwith the respondent Nos. 1 and 2. The Insurance Company is liable to satisfy the claim in absence of any breach of condition of the Insurance Policy by which the vehicle was expressly or impliedly not covered by permit to carry any passenger for hire or reward.

4. On perusal of the documents placed on record it appears that the issue is squarely covered by the decision of Supreme Court in the case of ***Smt. Mallawwa etc Vs. Oriental Insurance Company and others reported in AIR 1999 SC 589*** wherein it is held that Insurance Company is not liable in case of death of owner of goods carried in a goods vehicle. For the purposes of Section 95, ordinarily a vehicle could have been regarded as a vehicle in which passengers are carried if the vehicle was of that class. Keeping in mind the classification of vehicles by the Act, the requirement of registration with particulars including the class to which it belonged, requirement of obtaining a permit for using the vehicle for different purposes and compulsory coverage of insurance risk, it would not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use or use on some stray occasions of that vehicle for carrying passengers for hire or reward. For the

purpose of construing a provision like proviso (ii) to Section 95(1)(b), the correct test to determine whether a passenger was carried for hire or reward, would be whether there has been a systematic carrying of passengers. Only if the vehicle is so used then that vehicle can be said to be a vehicle in which passengers are carried for hire or reward.

In the case of ***Motor Owners Insurance Co. Ltd. vs. Jadavji Keshavji Modi & Ors reported in 1981 GLR page 1208*** it is held that Under section 95(2) of the Motor Vehicles Act (as it existed before its amendment by Motor Vehicle At 56 of 1969) the liability of the Insurance Company was restricted to Rs. 20,000/- in respect of persons other than the passengers carried for hire or reward and to Rs. 20,000/- in all in respect of passengers. The contention was that under clause (a) as it stood at the material time the liability of Insurance Company under clause (a) was limited to Rs. 20,000/- in all and, therefore, the insurer cannot be asked to pay compensation in excess of that amount. Same principle has been laid down in the case of ***National Insurance Co. Ltd. Vs. V. Chinnamma and others, reported in (2004) 8 SCC 697.***

5. In the premises I do not find any merits in the matter. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter. I am in complete agreement with the reasoning adopted and the findings arrived at by the trial court. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*